

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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In the Matter of the Petition	:	
of	:	
ROBERT F. AND VIOLETA M. COLEMAN	:	DETERMINATION
for Redetermination of a Deficiency or for	:	
Refund of New York State and New York City	:	
Income Taxes under Article 22 of the Tax Law	:	
and Chapter 46, Title T of the New York City	:	
Administrative Code for the Years 1982 and 1983.	:	

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Petitioners, Robert F. and Violeta M. Coleman, 208 Targee Street, Staten Island, New York 10304, filed a petition for redetermination of a deficiency or for refund of New York State and New York City income taxes under Article 22 of the Tax Law and Chapter 46, Title T of the New York City Administrative Code for the years 1982 and 1983 (File No. 802740).

A hearing was held before Joseph W. Pinto, Jr., Administrative Law Judge, at the offices of the Division of Tax Appeals, Two World Trade Center, New York, New York, on March 24, 1988 at 10:45 A.M. Petitioners appeared pro se. The Audit Division appeared by William F. Collins, Esq. (Irwin A. Levy, Esq., of counsel).

ISSUES

I. Whether the Audit Division properly disallowed various deductions claimed by petitioners, including home office expenses, for the period in issue.

II. Whether the Audit Division properly asserted penalty pursuant to Tax Law § 685(b).

FINDINGS OF FACT

1. Petitioners, Robert F. and Violeta M. Coleman, timely filed New York State and City of New York income tax resident returns for the years 1982 and 1983 (the "audit period") under the filing status "Married filing joint return". On the returns, Robert Coleman listed his occupation as "Computer Analyst" for 1982 and "Asst. Vice President Technical Support" for 1983. Violeta Coleman listed her occupation as "Registered Nurse" for both years. For 1982, petitioners reported total income of \$29,486.00, after adjustment, and for 1983, \$32,497.00, after adjustment.

2. On June 13, 1985, the Audit Division issued a Statement of Personal Income Tax Audit Changes to petitioners, which set forth additional tax due of \$2,296.00, penalty of \$114.00 and interest of \$387.00 for a total due of \$2,797.00. The explanation offered on said statement was as follows:

	<u>1982</u>	<u>1983</u>	<u>TOTAL</u>
"			
See Attached		\$ 6,758.00	\$ 9,274.00

Medical adjustment 3% of \$4,268.00	149.00	-0-
Net Adjustment	6,907.00	9,274.00
Taxable Income Previously Stated	18,419.00	17,479.00
Corrected Taxable Income	25,326.00	26,753.00
Tax on Corrected Taxable Income	1,902.00	2,042.00
Minimum Income Tax (See attached IT-220)	-0-	-0-
Add: New York City Tax	698.00	750.00
Surcharge	34.00	75.00
Corrected Tax Due	2,634.00	2,867.00
Tax Previously Computed	1,656.00	1,549.00
Total Additional Tax Due	978.00	1,318.00
Penalties:		
685(b) 5%	49.00	65.00
Interest (.23083) (.12313)	226.00	161.00
Total	1,253.00	1,544.00
\$2,797.00"		

The adjustments set forth at the beginning of this chart represent a disallowance of deductions totalling \$6,758.00 for 1982 and \$9,274.00 for 1983.

The Audit Division attached sheets to the Statement of Audit Changes which delineated the disallowed items for each year. The following information was provided regarding the year 1982:

"The following items have been disallowed as non-deductible.

<u>Claimed</u>	<u>Allowed</u>	<u>Adjustment</u>	
Car & Truck Expense	\$ 646.00	\$ -0-	\$ 646.00
Depreciation	2,077.00	-0-	2,077.00
Office Supply and Postage	108.00	-0-	108.00
Travel and Entertainment	45.00	-0-	45.00
Utilities and Telephone	292.00	-0-	292.00
Office in home	1,100.00	-0-	1,100.00
Total 1	<u>\$4,268.00</u>	<u>\$ -0-</u>	<u>\$4,268.00</u>

The following items have been allowed up to an amount deemed reasonable.

	<u>Claimed</u>	<u>Allowed 1/6</u>	<u>Adjustment</u>
Uniforms	\$275.00	\$ 45.00	\$230.00
Uniform Support Stocking [sic]	310.00	51.00	259.00
Laundry	<u>250.00</u>	<u>41.00</u>	<u>209.00</u>
Total 2	<u>\$835.00</u>	<u>\$137.00</u>	<u>\$698.00</u>

The following itemized deductions have been disallowed due to unsubstantiated [sic] or not deductible.

<u>Claimed</u>	<u>Allowed</u>	<u>Adjustment</u>	
Sales tax (other purchases)	\$ 526.00	\$ -0-	\$ 526.00
Contributions	562.00	145.00	417.00
Miscellaneous	849.00	-0-	849.00
Total 3	<u>\$1,937.00</u>	<u>\$145.00</u>	<u>\$1,792.00</u>

Total Disallowance 1-2-3 above \_\_\_\_\_ \$6,758.00

Med. Adj. 4268 x 3% = 149 \$ 149  
 +698  
 4966"

With regard to 1983, the following information was provided:

"The following items have been disallowed as non-deductible.

<u>Claimed</u>	<u>Allowed</u>	<u>Adjustment</u>	
Car & Truck Expense	\$1,166.00	\$ -0-	\$1,166.00
Depreciation	3,556.00	-0-	3,556.00
Supplies	128.00	-0-	128.00
Travel & Entertainment	110.00	-0-	110.00
Utilities & Telephone	590.00	-0-	590.00
Office in home	1,200.00	-0-	1,200.00
Total 1	<u>\$6,750.00</u>	<u>\$ -0-</u>	<u>\$6,750.00</u>

The following items have been allowed up to an amount deemed reasonable.

	<u>Claimed</u>	<u>Allowed 1/6</u>	<u>Adjustment</u>
Laundry & cleaning	\$255.00	\$ 42.00	\$213.00
Uniforms	245.00	40.00	205.00
Uniform Shoes ½ allowed	120.00	60.00	60.00
Uniform Stocking [sic]	<u>285.00</u>	<u>47.00</u>	<u>238.00</u>
Total 2	<u>\$905.00</u>	<u>\$189.00</u>	<u>\$716.00</u>

The following itemized deductions have been disallowed due to unsubstantiated [sic] or not deductible.

<u>Claimed</u>	<u>Allowed</u>	<u>Adjustment</u>	
Sales Tax (other purchases) [sic]	\$ 443.00	\$ -0-	\$ 443.00
Contributions	780.00	205.00	575.00
Miscellaneous	1,191.00	401.00	790.00
Total 3	<u>\$2,414.00</u>	<u>\$606.00</u>	<u>\$1,808.00</u>

Total Disallowance 1-2-3 above

\$9,274"

3. On August 23, 1985, the Audit Division issued a Notice of Deficiency to petitioners asserting additional tax due of \$2,296.00, plus penalty of \$114.00 and interest of \$438.95, for a total due of \$2,848.95.

4. During 1982 and 1983, petitioner Robert F. Coleman was employed by Donaldson, Lufkin & Jenrette, Inc. During that same time, petitioner Violeta M. Coleman was an independent contractor working as an on-call special duty nurse with Maimonides Medical Center in Brooklyn, New York. Petitioner Robert F. Coleman filed W-2 forms for 1982 and 1983 reporting wages in the amounts of \$30,107.52 and \$32,496.65, respectively.

Petitioner Violeta M. Coleman submitted 1099 forms into evidence, showing nonemployee compensation of \$4,462.50 for 1982 and \$8,460.00 for 1983. She received no employee benefits and had no taxes deducted.

5. Petitioner Violeta M. Coleman's occupation was that of a rehabilitation counselor. It required daytime and nighttime, in-home private duty and in-home post discharge care.

Mrs. Coleman received her assignments from the hospital via the telephone in her home. She would go to the hospital, approximately seven miles from her home, to pick up the necessary patient information and then proceed to the patient's home. The hospital required that she use her own car to complete her patient assignments. After fulfilling her duties at the patient's home, Mrs. Coleman would return directly to her home, without returning to the hospital. Although petitioner was unable to obtain a log of her patient visits from the hospital, she did obtain a list of all the patients she saw in 1982 and 1983. Mrs. Coleman treated 113 patients in 1982 and 154 patients in 1983. Mrs. Coleman possessed no mileage log or travel records. The auditor combined all of Violeta Coleman's days spent actually visiting patients, totalling 63 in 1982, and determined that she was employed in her trade or business approximately 2 months out of the year. Work records for the year 1983 showed similar periods of activity.

6. Petitioners' residence during 1982 and 1983 was a six-room apartment, with three bedrooms. Petitioners occupied one bedroom, their two daughters another, and the third was used as a spare room, containing nursing books, shelving, a desk and a telephone. The telephone was an extension of the one line running into the apartment. Petitioners purchased the telephone unit in 1982 for \$54.11.

Petitioner Violeta M. Coleman used the office to receive assignments from the hospital and maintain mandatory reports of treatment rendered and patients' conditions, which reports were subsequently given to the nursing office at Maimonides Hospital. Mrs. Coleman also used the office to prepare herself for visits to patients by reviewing the technical nursing information kept there. Mrs. Coleman was not provided any work space at Maimonides Hospital.

7. Petitioner Robert F. Coleman occasionally used the office for completing work he had brought home from his place of employment. The office was also used by Violeta Coleman in an accounting business started in 1983, and for management of the business finances during both years.

8. At hearing, petitioners presented testimony and documentation to support their claimed business expenses and itemized deductions for 1982 and 1983.

(a) Car and truck expenses were claimed by petitioner Violeta Coleman based upon expense records she maintained. Mrs. Coleman asserted that she traveled approximately 1,250 miles for work purposes in 1982, and 2,500 miles in 1983, and that her car was used primarily for business while her husband's car was used for personal travel. She also depreciated her car based on a three-year accelerated cost recovery system ("ACRS") basis.

(b) Petitioner Violeta Coleman claimed office supplies which included business stationery, postage, an attache bag, pen light and wristwatch with a second hand, all related to her nursing duties.

(c) Travel and entertainment expenses claimed included replacement of a patient's lost garment and small contributions to hospital and nursing social functions.

(d) Violeta M. Coleman claimed a home office deduction for one-sixth of the total cost of her apartment. Utilities were prorated in the same fashion as the claimed home office expense, but the telephone expense included the entire basic rate since the telephone was allegedly not used for personal calls. Petitioners also claimed the value of the extension phone purchased in 1982.

(e) Uniforms, nursing shoes, and support stocking purchases were substantiated by receipts. Petitioner Violeta Coleman was pregnant during the latter part of 1982 and early part of 1983. Mrs. Coleman explained that due to her pregnancy, her size kept changing constantly, requiring the purchase of new uniforms, support stockings and shoes.

(f) The laundry expenses were determined at \$1.50 per week for washing and drying a load of laundry, \$2.75 per month for detergent and \$8.50 per month for bleach and blue spot remover. Mrs. Coleman washed her uniforms separately because of the requisite bleach and blue spot remover.

(g) The sales tax adjustment was conceded by both petitioners, and is not in issue.

(h) Contributions claimed by petitioners include \$4.00 each week (50 weeks) at church services and \$10.00 at Christmas and Easter. For 1982, petitioners presented receipts for a \$10.00 contribution to the American Heart Association, \$5.00 to the North Shore Animal League, \$10.00 to the United Fund of Greater New York, \$20.00 to the United Lithuanian Relief Fund, and \$2.00 for church and hospital raffle tickets.

Petitioners also claimed a deduction for the donation of used clothing with a fair market value of \$220.00, and donations to other organizations of \$25.00. Neither the clothing nor the other donations were substantiated by receipts for 1982.

For 1983, petitioners presented receipts for donations of \$25.00 to the Heart Fund, \$105.00 to the Animal Clinic of Bay Ridge, and \$15.00 to the United Fund of Greater New York.

Petitioners also possessed a "Donor's Receipt" from the "Salvage Bureau of the Society of St. Vincent de Paul" for "4 Large Bags of assorted clothing", which petitioners assembled in list form and had signed by the same person who signed the attached "Donor's Receipt". Petitioners estimated the fair market value of the clothes to be \$415.00.

In 1983, petitioners claimed contributions to their church in the amount of \$5.00 per week and \$10.00 at Christmas and Easter.

Petitioners listed \$43.00 worth of contributions for 1983 that had no accompanying receipts.

(i) In 1982, petitioners claimed miscellaneous expenses for job seeking by petitioner Robert Coleman during a three-day trip to Kansas City. Mr. Coleman presented substantiating documentation including: a letter from "AMP Incorporated", offering him a position as "Operations Manager" of the "Systems Department", following a meeting in Overland Park, Kansas; an airline ticket in the sum of \$388.00 representing a roundtrip fare from New York to Kansas City, Missouri; \$52.00 in meal receipts; and a parking receipt from LaGuardia Airport for \$45.00.

Petitioners claimed additional business expenses of \$134.00 including an attache case, desk set and resume printing, and professional computer book purchases of \$63.00.

For 1983, petitioners claimed miscellaneous expenses which included \$332.00 for a "job seeking" trip to Tampa, Florida. Petitioners provided proof of purchase for the airline ticket, but presented no documentation related to the three purported job interviews.

Also in 1983, petitioners claimed \$106.55 for printing services and paper goods related to job seeking, and \$305.83 for professional activities and supplies which were substantially personal in nature (e.g., luncheons, stamps for Christmas cards to employees and Cross pens).

Petitioners claimed a total of \$110.66 for professional books during 1983, including books on computer applications and tax preparation.

(j) Under investment expenses, petitioners claimed \$356.00 in 1982 and \$348.74 in 1983. These expenses were primarily for daily and weekly newspapers and other periodicals, and lunch in December 1983 to discuss investment options. For 1983, petitioners filed a Federal form 1040, with a Schedule D showing a net short-term capital gain from investments of \$173.06. No investments were made by petitioners in 1982.

#### CONCLUSIONS OF LAW

A. Section 162(a) of the Internal Revenue Code provides for the deduction of expenses incurred in pursuit of a trade or business in the determination of adjusted gross income. Clearly, Violeta Coleman was in pursuit of a trade or business, special duty nursing, within the meaning and intent of IRC § 162(a).

B. Internal Revenue Code § 280A(a) states that:

"Except as otherwise provided in this section, in the case of a taxpayer who is an individual or an S corporation, no deduction otherwise allowable under this chapter shall be allowed with respect to the use of a dwelling unit which is used by the taxpayer during the taxable year as a residence."

C. Internal Revenue Code § 280A(c)(1) sets forth exceptions to subsection (a):

"Subsection (a) shall not apply to any item to the extent such item is allocable to a portion of the dwelling unit which is exclusively used on a regular basis --

(A)[as] the principal place of business for any trade or business of the taxpayer.

\* \* \*

In the case of an employee, the preceding sentence shall apply only if the exclusive use referred to in the preceding sentence is for the convenience of his employer."

D. In light of the above, petitioner Violeta M. Coleman, an independent contractor with Maimonides Hospital, having no other office space allocated to her, yet being required to maintain written documents and perform various activities both prior and subsequent to patient visits, qualifies for a home office deduction.

The test for the allowance of home office expenses has been outlined as requiring that the area be used exclusively and continuously as the principal place of business, at the convenience of the employer (Weissman v. Commissioner, 751 F2d 512).

Although there were no regulations promulgated pursuant to IRC § 280A, the legislative history of P.L. 94-455 states that expenses attributable to the office or business use of the home are deductible if they are "ordinary and necessary expenses paid or incurred in carrying on a trade or business or for the production of income." Typically, the expenses include an allocable portion of rent, maintenance, utility and insurance expenses incurred in connection with the residence (HR Rep No. 658, 94th Cong, 2d Sess 157, reprinted in 1976 US Code Cong & Admin News 3050, 3051).

Exclusive use of a portion of a taxpayer's dwelling unit means that the taxpayer must use a specific part of a dwelling unit solely for the purpose of carrying on his trade or business (HR Rep No. 658, 94th Cong, 2d Sess 161, reprinted in 1976 US Code Cong & Admin News 3050, 3054).

Petitioner Violeta Coleman was an independent contractor who provided services to Maimonides Hospital during the years in issue. It has been held that:

"In the case of a true independent contractor or independent professional performing services for a large number of clients, customers or patients in a large number of places, it may well be that such a taxpayer's home office may be the focal point of his trade or business, being the place where he spends the greater part of his time (when compared to other possible focal points) in co-ordinating his business activities" (Anderson v. Commissioner, 44 TCM 1305; emphasis added).

In the instant case, the home office was used exclusively by Violeta Coleman to perform the essential tasks required in her trade or business, and as such the use of a home office was a practical necessity thus negating any claim that the office was used by Mrs. Coleman for personal use (Drucker v. Commissioner, 715 F2d 67). Business accounting and preparation of tax returns are included as being attributable to a trade or business carried on by the taxpayer pursuant to section 62(1) of the Internal Revenue Code. (Treas. Reg. 1.162-1[a].)

E. While the issue of Robert F. Coleman's use of the home office for business purposes has not been reached in determining the allowance of such deduction, the question concerning Mr. Coleman is rendered moot, in that Mr. Coleman's business use of the home office does not preclude Mrs. Coleman from claiming the deduction, whether or not Mr. Coleman's use qualified under IRC § 280A(c)(1), and it is not necessary to allocate the home office expenses between petitioners (*Frankel v. Commissioner*, 82 TC 318).

F. Internal Revenue Code § 274(d) requires the taxpayer claiming a travel expense under section 162 to substantiate:

"by adequate records or by sufficient evidence corroborating his own statement (A) the amount of such expense or other item, (B) the time and place of the travel..., (C) the business purpose of the expense or other item...."

Treasury Regulation § 1.274-5(c)(1) states that:

"[s]ection 274(d) contemplates that a taxpayer will maintain and produce such substantiation as will constitute clear proof of an expenditure for travel...."

Petitioners herein estimated the mileage traveled by Mrs. Coleman in performing her work, and were unable to clearly prove how many miles were driven to patients' homes as opposed to the disallowed commutation to Maimonides Hospital and home from her last patient visit.

Further, while the approximately 60 days per year spent visiting patients has no bearing on the home office deduction, it is concededly the only business-related travel that petitioner Violeta Coleman can claim in her work as a special duty nurse. In that petitioners have failed to substantiate this travel pursuant to the Internal Revenue Code, the claims for both automobile expense and depreciation are denied.

Treasury Regulation § 1.162-1(g) states, in pertinent part, that:

"[t]ransportation expenses do not include the cost of commuting to and from work; this cost constitutes a personal, living, or family expense and is not deductible."

Mrs. Coleman's travel to Maimonides Hospital, and then home from her last patient visit constitutes commuting. While it is true that travel between work assignments may be deductible, petitioners have failed to provide adequate substantiation (*see*, *Heuer v. Commissioner*, 32 TC 947).

G. A professional person may deduct the cost of supplies used, including professional dues, professional books and journal subscriptions, rent paid for office rooms, utilities and telephones used in the office and items necessary to perform the business (Treas. Reg. § 1.162-6).

Thus petitioners' claimed office supplies and business expenses, including business stationery, postage, an attache bag, pen light and wristwatch, and Mr. Coleman's substantiated



1982 job-seeking trip to Kansas City, as well as his business expenses for the attache case, desk set, resume printing and computer book purchases are clearly deductible expenses.

Similary, the utilities deducted by petitioners for the home office are deductible on the same prorata basis used to determine the home office allowance.

In that the petitioners would have had a telephone in the residence regardless of their employment, the service itself is a personal or family expense (*Loughlin v. U.S.*, 82-2 US Tax Cas 9543).

However, the extension unit purchased for use in the home office is deductible as an ordinary and necessary business expense under IRC § 162(a).

H. The travel and entertainment expenses claimed by petitioners, including the lost garments and the small contributions to hospital and nursing functions as well as the \$305.83 for the luncheons, stamps for Christmas cards and Cross pens, are personal in nature and not ordinary and necessary business expenses under Internal Revenue Code § 162(a). However, the purchase of uniforms and uniform supplies by a nurse, and the cost of maintaining and laundering the uniforms, which are not suitable for ordinary wear, are deductible expenses. (IRC § 162(a); Rev Rul 70-474, 1970-2 CB 35.)

Further, in that petitioner Violeta Coleman was pregnant during portions of both years at issue, the slightly elevated cost of these items is deemed to be reasonable under the circumstances.

I. The contributions made by petitioners which were substantiated by receipts are deductible. Likewise, donations to petitioners' church are also deductible. Such deductions are allowed based upon the reasonableness of the amounts claimed, and corroborating testimony presented regarding church contri-butions (see \_\_\_, *Kibble v. Commissioner*, 43 TCM 1300; *Reinert v. Commissioner*, 39 TCM 770; *Pepperman v. Commissioner*, 22 TCM 249).

The deduction for the donation of clothing for 1982 was unsubstantiated and is disallowed. The receipted donation for 1983 to the "Salvage Bureau of the Society of St. Vincent de Paul" supports the claim that the donation was made. The attached list is reasonable, was unchallenged by the Audit Division and is allowed as a deduction.

J. Job-seeking expenses are deductible under IRC § 162(a) when the employment sought is in the same trade or business as the one presently held (Rev Rul 75-120, 1975-1 CB 55).

For 1982, petitioner Robert Coleman's listed occupation per his tax return was "Computer Analyst"; his 1983 return held him out to be "Asst. Vice President Technical Support". While the descriptions of the occupations are not specific, it is reasonable to assume that the two titles and the job offered to him, that of "Operations Manager of the Systems Department", are the same trade or business.

It is not necessary for the seeking of new employment to result in a change of job for the deduction to be allowable (Rev Rul 75-120, supra).

The job-seeking expenses incurred for 1982 are deductible because the documentation offered establishes that the trip met the job-seeking criteria set forth above. However, for 1983, the failure to substantiate the purpose of the travel as that of seeking employment, pursuant to

IRC § 274(d), defeats the deductibility.

K. The claimed investment deductions are denied. In 1982, petitioners made no investments. In 1983, petitioners claimed deductions for expenses that included daily and weekly newspapers and other periodicals that were not substantiated by petitioners. The cost to an individual of a daily newspaper of general circulation is inherently a nondeductible personal expenditure under IRC § 262 (Wheeler v. Commissioner, 48 TCM 819). Additionally, the luncheon claimed was unsubstantiated and uncorroborated and is therefore disallowed.

L. That Tax Law § 685(b) states:

"Deficiency due to negligence. -- If any part of a deficiency is due to negligence or intentional disregard of this article or rules or regulations hereunder (but without intent to defraud), there shall be added to the tax an amount equal to five percent of the deficiency."

Petitioners did not intentionally disregard the law, nor act negligently in preparing their tax returns. The underpayment was due to a reasonable, albeit incorrect, view of the applicable tax provisions, and thus the section 685(b) penalty is abated (Matter of Boris Shteinshleifer, State Tax Commission, February 29, 1984).

M. The petition of Robert F. Coleman and Violeta M. Coleman is granted to the extent of Conclusions of Law "D", "G", "H", "I", "J" and "L"; the Audit Division is directed to modify the Notice of Deficiency issued August 23, 1985 accordingly; and, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

September 9, 1988

Jr. \_\_\_\_\_ /s/ Joseph W. Pinto,  
ADMINISTRATIVE LAW JUDGE